



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-37/54767

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 9, 2002, under Wis. Stat. § 49.455(8)(c) (1999-00) and Wis. Admin. Code § HFS 103.075(8)(a)1. (February 2002), to establish that petitioner's wife needs income above the level provided by the Medical Assistance (MA) program's Minimum Monthly Maintenance Needs Allowance (MMMNA) as established in Division of Hearings and Appeals (DHA) Decision MRA-37/54501 dated August 1, 2002, a fair hearing was held on October 22, 2002 in Wausau, Wisconsin. At petitioner's request the record was held open until November 5, 2002.

The issue for determination is whether it has been established that petitioner's wife needs income above the level provided by the MMMNA as established in DHA Decision MRA-37/54501 dated August 1, 2002.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Represented by:

(petitioner's spouse)

Division of Health Care Financing (DHCF)  
Department of Health & Family Services (DHFS)  
State of Wisconsin  
Room 250  
1 West Wilson Street  
P.O. Box 309  
Madison, Wisconsin 53701-0309

BY: Shirley Stinewal, ESS  
Marathon County Department of Social Services  
400 East Thomas Street  
Wausau, Wisconsin 54403-6498

OTHER PERSONS PRESENT:  
petitioner's stepdaughter

HEARING OFFICER:  
Sean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx; CARES #xxxxxxxxxx; DOB September 6, 1917) is a resident of Marathon County.
2. On July 5, 2002 petitioner filed a request for a fair hearing with DHA for the purpose of increasing his wife's income above the level provided by the MA program's MMMNA; that request was assigned appeal # MRA-37/54501 and a Hearing was held on July 25, 2002 in Wausau, Wisconsin.
3. Among the expenses cited by petitioner at the July 25, 2002 Hearing in MRA-37/54501 were petitioner's health insurance premium of \$199.59/month and the payroll taxes withheld from the income earned by petitioner's wife.
4. On August 1, 2002 DHA issued a Decision, dated August 1, 2002, concluding that the MMMNA for petitioner's wife could be increased from \$2,102.48 to \$2,157.84; during the Hearing process for MRA-37/54501, and prior to a Decision being made, the following 2 items were considered, but not allowed, in calculating the MMMNA: (A) petitioner's health insurance premium of \$199.59/month; and, (B) the payroll taxes withheld from the income earned by petitioner's wife. See, DHA Case No. MRA-37/54501 (Wis. Div. Hearings & Appeals August 1, 2002) (DHFS).
5. On August 9, 2002 petitioner filed a request for a rehearing (dated August 7, 2002 and received by DHA on August 12, 2002) in MRA-37/54501; in that request for a rehearing petitioner states:  
"We wish to request a new hearing. We have obtained additional evidence that we feel will affect the outcome regarding the increase in allocation that the petitioner's spouse is required to pay. We did not have this information available at the time of the original hearing. This new information consists of charges for snow removal that were not included in the original document. Also, regarding house maintenance, only the materials were included, not the cost of the labor to have these repairs done."
6. By a letter Order dated August 27, 2002 DHA denied petitioner's request for a rehearing in MRA-37/54501 stating that the evidence referenced by petitioner in his request for a rehearing "could have been discovered previously by you if you had exercised due diligence in formulation of the detailed list of your 'monthly bills' in preparing for the fair hearing."
7. Petitioner did not appeal MRA-37/54501 to Circuit Court.
8. On September 9, 2002 petitioner filed another request for a fair hearing with DHA; this request was for the purpose of increasing his wife's income above the level provided by the MA program's MMMNA as established in MRA-37/54501; that request was assigned appeal # MRA-37/54767 and a Hearing was held on October 22, 2002 in Wausau, Wisconsin; this Decision resulted from that Hearing. Exhibits #1 & #2.

9. At the October 22<sup>nd</sup> Hearing in MRA-37/54767 petitioner requested that the following expenses be considered in calculating the MMMNA: (A) petitioner's health insurance premium of \$199.59/month; (B) the payroll taxes withheld from the income earned by petitioner's wife; (C) snowplowing; and, (D) an increase in the cost of oil for heating the home where petitioner's wife lives. Exhibits #1, #2, #3 & #4.

## DISCUSSION

Petitioner is a nursing home resident and is receiving MA. Petitioner's wife lives in the community.

When an MA recipient is in a nursing home all of that recipient's income, with certain limited exceptions not relevant here, must be used to pay nursing home costs. MA pays any nursing home costs which exceed the recipient's income.

Many MA recipients who are nursing home residents are (like petitioner) married and have spouses who live in the community. In these cases, the law recognizes that requiring all of the recipient's income to be used to pay nursing home costs may leave the community spouse in poverty. In order to prevent the impoverishment of the community spouse, the law allows the community spouse to keep up to a certain maximum amount of income per month. This is known as the "Minimum Monthly Maintenance Needs Allowance" (MMMNA). The MMMNA provided for by law without a fair hearing is the lessor of \$2,232.00 or \$1,990.00 plus excess shelter costs. Wis. Stat. § 49.455(4)(c) (1999-00), MA Handbook, Appendix 23.6.0.; See also, Wis. Admin. Code § HFS 103.075(6)(b) (February 2002). In petitioner's case the MMMNA has been determined by the fair hearing process and is \$2,157.84. See, DHA Case No. MRA-37/54501 (Wis. Div. Hearings & Appeals August 1, 2002) (DHFS); See also, Wis. Stat. § 49.455(8)(a)1. (1999-00) & Wis. Admin. Code § HFS 103.075(8)(a)1. (February 2002).

The MMMNA can be increased if either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the MMMNA. Wis. Stat. § 49.455(8)(c) (1999-00); Wis. Admin. Code § HFS 103.075(8)(c) (February 2002); MA Handbook, Appendix 23.6.0.

The phrase "exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code § HFS 103.075(8)(c) (February 2002); MA Handbook, Appendix 23.6.0.

Thus, the burden is on the person seeking an increase in the MMMNA. It must be established that the community spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. A product or service is not a necessary and basic maintenance need simply because the community spouse purchased it on a routine basis prior to the recipient going into a nursing home.

In this case petitioner argues that his wife cannot provide for her own necessary and basic maintenance needs because the following 4 expenses were not used in MRA-37/54501 when calculating the MMMNA: (A) petitioner's health insurance premium of \$199.59/month; (B) the payroll taxes withheld from the

income earned by petitioner's wife; (C) snowplowing; and, (D) an increase in the cost of oil for heating the home where petitioner's wife lives

As to (A) and (B): during the Hearing process for MRA-37/54501, prior to a Decision being made, these 2 items were considered but were not allowed. I will not allow those items here when they were considered but not allowed in MRA-37/54501 -- to do so would necessarily involve me in a review of the Decision in MRA-37/54501. I cannot here engage in a review of the Decision in MRA-37/54501. The proper avenue for such a review is either by way of a rehearing request or an appeal to Circuit Court. See, Wis. Stat. §§ 227.49 & 227.52 (1999-00).

As to (C) and (D): neither of these items can be allowed because petitioner has failed to provide sufficient documentation to support them. Petitioner provided a receipt dated October 21, 2002 for \$60.00 for "snow plow services". However, there is nothing to indicate what petitioner's monthly expense for snowplowing is. Likewise, petitioner provided a receipt dated September 26, 2002 for \$86.25 from "Swetz Oil Co., Inc." That receipt shows 75 gallons of "No. 2 fuel oil" at a cost of \$1.15/gallon. First, this receipt is at odds with the testimony offered by petitioner's wife at the October 22<sup>nd</sup> Hearing. At that Hearing petitioner's wife testified that oil for heating their home went up from 98 cents to \$1.40. Second, the information provide by petitioner is not sufficient to enable a determination to be made of what the increase in heating oil cost is on a monthly basis.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, it has been not been established that petitioner's wife needs income above the level provided by the MMMNA as established in DHA Decision MRA-37/54501 dated August 1, 2002.

**NOW, THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 10th day of  
December, 2002

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/sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals  
131/SPM